

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANDREI RUTIAGA,

Plaintiff,

vs.

ERIC LEE COOK, *et. al.*,

Defendants.

Case No.: 2:23-cv-01161-GMN-EJY

**ORDER GRANTING
MOTION TO DISMISS**

Pending before the Court is a Motion to Dismiss, (ECF No. 13), filed by Plaintiff Andrei Rutiaga. Defendants filed their Non-Opposition, (ECF No. 14). Because Defendants will not suffer legal prejudice as a result of this case's dismissal, the Court **GRANTS** Plaintiff's Motion to Dismiss.

This suit arises out of a vehicle collision that occurred when Defendant Cook rear-ended Plaintiff's vehicle. (*See generally* Compl., ECF No. 1). Defendants filed an Answer to Plaintiff's Complaint, (ECF No. 11), and Plaintiff moved to dismiss the suit under Fed. Rule Civ. Pro. 41(a)(2), (ECF No. 13). Under Federal Rule of Civil Procedure 41(a)(2), this action "may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper."

"A district court should grant a motion for voluntary dismissal under [FRCP] Rule 41(a)(2) unless a defendant can show that it will suffer some plain legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001) (citing *Waller v. Fin. Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987)). Although the Ninth Circuit has not adopted a definitive list of factors for determining legal prejudice, "courts have looked to several factors, including: (1) the defendant's effort and expense involved in preparing for trial; (2) excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action; (3) an insufficient explanation of

1 the need to seek a dismissal; and (4) a motion for summary judgment has been brought by the
2 defendant.” *Id.* (citing *United States v. Berg*, 190 F.R.D. 539, 543 (E.D. Cal. 1999)).

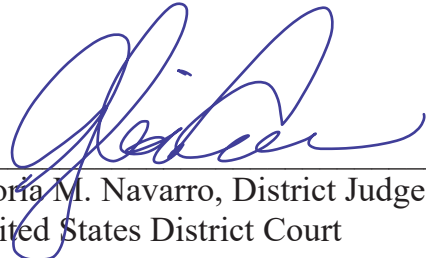
3 None of the factors are present here. This case is at an early stage in the litigation, and
4 the parties have not conducted depositions nor completed other discovery. (Mot. Dismiss 3:4–
5 5). Neither party alleges that Plaintiff delayed the prosecution of this action, and Defendants
6 have not brought a motion for summary judgment. Defendants also do not oppose the
7 dismissal of the action. (*See* Non-Opposition, ECF No. 14). Moreover, Defendants’ Answer
8 did not include any counterclaims. Thus, the Court GRANTS Plaintiff’s Motion for Voluntary
9 Dismissal without prejudice.

10 Accordingly,

11 **IT IS HEREBY ORDERED** that the Defendants’ Motion to Dismiss, (ECF No. 13), is
12 **GRANTED.**

13 The Clerk of Court is kindly requested to close the case.

14 Dated this 18 day of June, 2024.

15
16 
17 _____
18 Gloria M. Navarro, District Judge
19 United States District Court
20
21
22
23
24
25